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 13 City of San Jose

(ENDORSED)
 FILED
 JAN 29 2013
 DAVID H. YAMASAKI
 Chief Executive Officer/Clerk
 Superior Court of CA County of Santa Clara
 BY _____ DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA

11 SAN JOSE POLICE OFFICERS
 12 ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, BOARD OF
 16 ADMINISTRATION FOR POLICE AND
 17 FIRE RETIREMENT PLAN OF CITY OF
 18 SAN JOSE, and DOES 1-10 inclusive.,

19 Defendants.

20 AND RELATED CROSS-COMPLAINT
 21 AND CONSOLIDATED ACTIONS
 22
 23
 24

) Case No. 1-12-CV-225926

) [Consolidated with Case Nos. 112CV225928,
 112CV226570, 112CV226574, 112CV227864]

) Assigned for all purposes to the Honorable
 15 Peter H. Kirwan

) DEFENDANT'S SUPPLEMENTAL
 16 REQUEST FOR JUDICIAL NOTICE IN
 17 SUPPORT OF MOTION FOR
 18 JUDGMENT ON THE PLEADINGS AS
 19 TO SAN JOSE POLICE OFFICERS
 20 ASSOCIATION AND AFSCME

) Date: January 29, 2013
 21 Time: 9:00 a.m.
 22 Dept.: 8

BY FAX

) Complaint Filed: June 6, 2012
 23 Trial Date: None Set

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Case No. 1-12-CV-225926

DEFENDANT'S SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE

1 Defendant City of San Jose hereby requests the Court to take judicial notice pursuant to
2 California Evidence Code Sections 450 *et seq.*, and in accordance with California Rules of Court
3 3.1113, subdivision (l) and 3.1306, subdivision (c), of the following material, true and correct
4 copies of which are attached hereto:

5 Exh. C: Ordinance No. 29198 – “An Ordinance of the City of San Jose Amending
6 Various Sections of Chapter 3.32 and 3.36 of Title 3 of the San Jose
7 Municipal Code to Clarify the City Charter Supersedes the City of San Jose
8 Police and Fire Retirement Plan in Event of Conflict, Discontinue the
9 Supplemental Retiree Benefit Reserve, and Clarify Actuarial Soundness is
Determined Consistent With the California Constitution To Be Effective
March 1, 2013,” and specifically sections 3.32.320(B) and 3.36.540(B).

10 Exh. D. City Council Agenda, January 29, 2013, specifically page 2, Consent
11 Calendar, Item 2.2 re Final Adoption of Ordinances, listing Ordinance
29198.

12 Exhibits C and D are properly subject to judicial notice under California Evidence Code
13 sections 453 and 452(b) (providing that courts may take judicial notice of “legislative enactments
14 issued by or under the authority of the United States or any public entity in the United States”).
15 *See Trinity Park, L.P. v. City of Sunnyvale*, 193 Cal. App. 4th 1014, 1027 (“The Evidence Code
16 also expressly provides for judicial notice of a public entity’s legislative enactments and official
17 acts. Thus, we may take notice of local ordinances and the official resolutions, reports, and other
18 official acts of a city.”) These are relevant to the determination of issues raised in Plaintiffs’
19 Pension Protection Act claims. These requests were not made with the City’s original Request for
20 Judicial Notice because the ordinance and agenda had not yet been approved on first reading or
21 otherwise.

22 For these reasons, the City respectfully requests that the Court take judicial notice of the
23 above-listed documents.

24 DATED: January 22, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

25
26 By:

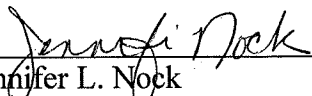

Jennifer L. Nock
Attorneys for Defendant
City of San Jose

EXHIBIT C

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF CHAPTERS 3.32 AND 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THE CITY CHARTER SUPERSEDES THE CITY OF SAN JOSE POLICE AND FIRE RETIREMENT PLAN IN EVENT OF CONFLICT, DISCONTINUE THE SUPPLEMENTAL RETIREE BENEFIT RESERVE, AND CLARIFY ACTUARIAL SOUNDNESS IS DETERMINED CONSISTENT WITH THE CALIFORNIA CONSTITUTION, TO BE EFFECTIVE MARCH 1, 2013

WHEREAS, the City of San José ("City") wishes to further implement the provisions of Article XV-A of the City's Charter and clarify that in the event of conflict between the provisions of Article XV-A of the City's Charter and the City Police and Fire Retirement Plan, the City's Charter controls; and

WHEREAS, the City wishes to discontinue use of the Supplemental Retiree Benefit Reserve; and

WHEREAS, the City wishes to clarify that the actuarial soundness of the City Police and Fire Retirement Plan is determined in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act");

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 3.32.110 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.010 Established - Name - Membership

- A. There is hereby continued, maintained and administered, as provided in this Chapter 3.32, a retirement plan for officers and employees receiving a monthly compensation for service as members of the police or fire department of the city, to be known as the "police and fire department retirement plan." All officers and employees shall be required to be members of said retirement plan.
- B. Under the City Council's authority pursuant to Article XV, Section 1500 of the City Charter, the provisions of Article XV-A of the City Charter are hereby implemented into the San José Municipal Code. To the extent there is any conflict between Article XV-A of the City of San José's Charter and the provisions of the police and fire department retirement plan, Article XV-A will supersede any conflicting provision in the police and fire department retirement plan, except as provided in Section 3.32.300.A.2 and 3.32.320.B.

SECTION 2. Section 3.32.300 of Chapter 32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.300 Contributions

- A. For the purpose of establishing and maintaining the retirement fund on a reserve basis, the city council shall make provision in the budget each fiscal year, beginning with the fiscal year December 1, 1946 to November 30, 1947, for the payment by the director of finance monthly into said fund of an amount equal to eight percent of the monthly payroll of all such members of the police department and fire department as the city's contribution, and the director of finance shall deduct three percent of the monthly pay from the salary of each member of the plan from and after the first day of October, 1946, as the contribution of the individual members thereof. Within six months after the effective date of

Ordinance 3254, adopted October 21, 1946, and at least every five years thereafter, the board of administration shall cause to be made an actuarial investigation into the mortality, service and compensation experiences of the members and beneficiaries, and shall further cause an actuarial valuation of the assets and liabilities of the retirement plan, and upon the basis of such investigation and valuation shall:

1. Adopt for the retirement plan such mortality, annuity, service and other tables as may be deemed necessary;
 2. In order to make said retirement plan actuarially sound in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"), revise or change the rates of contributions by members on the basis of such actuarial investigation and such mortality, annuity, service and other tables, but at all times maintaining the eight percent and three percent ratio of contributions on behalf of the city and the members of the plan as set forth in this section.
- B. Every member of the police department or fire department shall be deemed to consent and agree to the deductions from salary or compensation as provided herein, and payments less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such employees during the period covered by such payment except the right to the benefits to which they shall be entitled under the provisions hereof.
- C. The said deductions from salary or compensation shall continue until membership ceases or until the member retires on a retirement allowance.

SECTION 3. Section 3.32.320 of Chapter 32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.320 Investment of Funds - Conditions and Limitations

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

- A. The assets of the retirement fund are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan.
- B. The board shall discharge its duties with respect to the plan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"), and defraying reasonable expenses of administering the plan. The board's duty to the members and their beneficiaries shall take precedence over any other duty.
- C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.
- D. The board shall diversify the investments of the plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

SECTION 4. Section 3.36.010 of Chapter 36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.010 Establishment - Name - Scope

- A. There is hereby established a retirement plan for all persons, hereinafter in this chapter specified, who may become members thereof pursuant to the provisions of this Chapter 3.36. This plan shall be known as the "1961 police and fire department retirement plan," and includes all provisions of this chapter.
- B. The 1961 police and fire department retirement plan is established as a qualified governmental defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable treasury regulations and other guidance of the Internal Revenue Service. The board shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of the plan.
- C. Under the City Council's authority pursuant to Article XV, Section 1500 of the City Charter, the provisions of Article XV-A of the City Charter are hereby implemented into the San José Municipal Code. To the extent there is any conflict between Article XV-A of the City of San José's Charter and the provisions of the 1961 police and fire retirement plan, Article XV-A will supersede any conflicting provision in the 1961 police and fire retirement plan, except as provided in Section 3.36.410, 3.36.540.B and 3.36.1550 C and D.

SECTION 5. Section 3.36.410 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.410 Mortality, Service and Other Tables - Revision of Rates of Contribution

Upon the basis of any or all of such investigations, evaluations and determinations, the board shall adopt such mortality, service and other tables as may be necessary, and shall fix and from time to time change the rates of monthly contribution required of members and of the city as may be necessary to make this system at all times actuarially sound in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act") and to provide the benefits provided for in this retirement plan; provided that, as may be otherwise provided elsewhere in this chapter, the proportionate share of contributions on behalf of the city shall at all times be in the ratio of three to eight (3:8).

SECTION 6. Section 3.36.540 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.540 Investment of Funds - Conditions and Limitations

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

- A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan. The assets of the retirement plan must not revert, and no contributions shall be permitted to be returned to the employers, except as permitted by Revenue Ruling 91-4.
- B. The board shall discharge its duties with respect to the plan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan in a

manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"), and defraying reasonable expenses of administering the plan. The board's duty to the members and their beneficiaries shall take precedence over any other duty.

- C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.
- D. The board shall diversify the investments of the plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances, it is clearly prudent not to do so.
- E. The retirement plan may participate under Section 401(a)(24) of the Internal Revenue Code in a qualified group trust that meets the requirements of Section 401(a) of the Internal Revenue Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

SECTION 7. Section 3.36.580 of Chapter 3.36 of Title 3 of the San José Municipal Code is hereby repealed.

SECTION 8. The provisions of this Ordinance shall be effective on March 1, 2013.

PASSED FOR PUBLICATION of title this _____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
Acting City Clerk

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

TONI J. TABER
Acting City Clerk
Acting City Clerk of the City of San Jose
County of Santa Clara, State of California

By _____, Deputy

EXHIBIT D



CITY COUNCIL AGENDA

JANUARY 29, 2013

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
XAVIER E. CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO	DISTRICT 6
MADISON NGUYEN, VICE MAYOR	DISTRICT 7
ROSE HERRERA	DISTRICT 8
DONALD ROCHA	DISTRICT 9
JOHNNY KHAMIS	DISTRICT 10

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- **Strategic Support Services** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- **Community & Economic Development** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- **Neighborhood Services** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- **Transportation & Aviation Services** — A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- **Environment and Utility Services** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- **Public Safety Services** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

You may speak to the City Council about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council or Redevelopment Agency Board. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, Mayor Reed will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

The San José City Council meets every Tuesday at 1:30 p.m. and Tuesday at 7 p.m. as needed, unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at www.sanjooseca.gov/clerk/agenda.asp. Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Council Wing, 2nd Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjooseca.gov for the final document.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 or (408) 294-9337 as soon as possible, but at least three business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**

- 9:00 a.m. - Closed Session, Call to Order in Council Chambers
 - Open Session, Labor Negotiations Update (See Item 3.2)
 - Adjourn to Closed Session in Council Chambers Conference Room, W133
 - See Separate Agenda
 - 1:30 p.m. - Regular Session, Council Chambers, City Hall

- **Invocation (District 2)**
- **Pledge of Allegiance**
- **Orders of the Day**

Items recommended to be added, dropped, or deferred are usually approved under Orders of the Day unless the Council directs otherwise.

- **Closed Session Report**

1. CEREMONIAL ITEMS

- 1.1 Presentation of commendations to Principal Jason Sorich of San Antonio Elementary and Principal Rene Sanchez of Cesar Chavez Elementary for being named “Principal of the Year” by the San Jose Silicon Valley Chamber of Commerce and The Association of California School Administrators respectively. (Campos)
- 1.2 Presentation of a proclamation declaring January 27, 2013 as “International Holocaust Remembrance Day” in the City of San José. (Herrera)
- 1.3 Presentation of a commendation to the Delta Sigma Theta sorority in honor of the organization’s 100th anniversary. (Kalra)
- 1.4 Presentation of a commendation to the Pacific Coast Farmer’s Market Association for their 25 years of establishing and operating community-supported certified farmers’ markets and other direct marketing outlets that provide: viable economic opportunities for California farmers and food producers, local access to farm fresh products, support for local businesses and community organizations, and education concerning food, nutrition, and the sustainability of California agriculture. (Herrera)
(Rules Committee referral 1/16/13)

2. CONSENT CALENDAR

Notice to the public: There will be no separate discussion of Consent Calendar items as they are considered to be routine by the City Council and will be adopted by one motion. If a member of the City Council, staff, or public requests discussion on a particular item, that item may be removed from the Consent Calendar and considered separately.

- 2.1 **Approval of Minutes.**
- 2.2 **Final adoption of ordinances.**

Recommendation: Final adoption of ordinances.

- (a) ORD. NO. 29196 – Amending various sections of Part 1 of Chapter 13.36 of Title 13 and Part 12 of Chapter 20.100 of Title 20 of the San José Municipal Code relating to the permitting of curb cafes.
- (b) ORD. NO. 29198 – Amending various sections of Chapters 3.32 and 3.36 of Title 3 of the San José Municipal Code to clarify the City Charter supersedes the City of San José Police and Fire Retirement Plan in event of conflict, discontinue the Supplemental Retiree Benefit Reserve, and clarify actuarial soundness is determined consistent with the California Constitution, to be effective March 1, 2013.
- (c) ORD. NO. 29200 – Rezoning certain real property situated northerly of the intersection of Springbrook Avenue and Canyon Ridge Drive to the A(PD) Planned Development Zoning District. PDC07-077

2. CONSENT CALENDAR

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of April 4, 2012. (Mayor)
- (b) Rules and Open Government Committee Report of April 11, 2012. (Mayor)
- (c) Rules and Open Government Committee Report of April 18, 2012. (Mayor)
- (d) Rules and Open Government Committee Report of April 25, 2012. (Mayor)
- (e) Community and Economic Development Committee Report of November 26, 2012. (Herrera)
- (f) Transportation and Environment Committee Report of December 3, 2012. (Liccardo)
- (g) Ad Hoc Committee on Economic Competitiveness Committee Report of December 12, 2012. (Mayor)
- (h) Neighborhood Services and Education Committee Report of December 13, 2012. (Pyle)
- (i) Public Safety, Finance and Strategic Support Committee Report of December 20, 2012. (Constant)

2.4 Mayor and Council Excused Absence Requests.

Recommendation:

- (a) Request for an excused absence for Councilmember Constant from the Regular Meeting of the Rules and Open Government Committee on September 18, 2013 and the Regular Meeting of the Public Safety, Finance and Strategic Support Committee on September 19, 2013 due to Authorized City Business: Presiding as Vice Chair of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Meeting & Annual Conference in Sacramento, CA. (Constant)
(Rules Committee referral 1/16/13)

2.5 City Council Travel Reports.

2.6 Report from the Council Liaison to the Retirement Boards.

2.7 Amendment to the Central Parking Systems, Inc. Agreement.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute the First Amendment to the Agreement with Central Parking Systems, Inc. (Central Parking) to:

- (a) Revise the compensation rate to reflect negotiated savings due to the consolidation of parking facility operations, centralized administrative services, and a reduced management fee;

(Item continued on the next page)

2. CONSENT CALENDAR

2.7 Amendment to the Central Parking Systems, Inc. Agreement. (Cont'd.)

Recommendation:

- (b) Install the "Focus Point" application at the Third Street Garage at no cost to the City, to provide remote management functionality of parking transactions and operations; and
- (c) Extend the term of the Agreement by four months ending June 30, 2013, and add four additional one-year options to renew the agreement through June 30, 2017, subject to the appropriation of funds.

CEQA: Not a Project, File No. PP10-0666(a), Agreements and Contracts for Professional Services. (Finance/Transportation)

2.8 Vacation of Public Utility Easement on Edgewood Way.

Recommendation: Adopt a resolution summarily vacating a portion of a Public Utility Easement lying within Lot 114, Tract 1145 (1545 Edgewood Way). CEQA: Exempt, File No. PP12-107. Council District 6. (Public Works)

2.9 Actions Related to Mayor Reed's Travel to Washington, D.C.

Recommendation:

- (a) Approve travel by Mayor Reed to Washington, D.C. on January 16-21, 2013 to attend the United States Conference of Mayors' 81st Winter Meeting. Source of Funds: Mayor's Office Fund. (Mayor)
 - (b) Approve an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on January 16, 2013 due to Authorized City Business: United States Conference of Mayors' 81st Winter Meeting. (Mayor)
- (Rules Committee referral 1/16/13)

2.10 Councilmember Constant's Travel to Pasadena, CA and Sacramento, CA.

Recommendation:

- (a) Approve travel by Councilmember Constant to Pasadena, CA on April 4, 2013 to preside as Vice Chair of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Meeting. Source of Funds: Mayor & Council Travel Fund. (Constant)
- (b) Approve travel by Councilmember Constant to Sacramento, CA on June 13, 2013 to preside as Vice Chair of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Meeting. Source of Funds: Mayor & Council Travel Fund. (Constant)

(Item continued on the next page)

2. CONSENT CALENDAR

2.10 Councilmember Constant's Travel to Pasadena, CA and Sacramento, CA. (Cont'd.)

Recommendation:

- (c) Approve travel by Councilmember Constant to Sacramento, CA on September 18 - 20, 2013 to preside as Vice Chair of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Annual Conference. Source of Funds: Mayor & Council Travel Fund. (Constant)
(Rules Committee referral 1/16/13)

2.11 Councilmember Herrera's Travel to Washington, D.C.

Recommendation: Approve travel by Councilmember Herrera to Washington, D.C. on March 19-21, 2013 to attend the silicon Valley Leadership Group Annual Advocacy Trip. Source of Funds: Mayor & Council Travel Fund. (Herrera)
(Rules Committee referral 1/16/13)

3. STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

3.2 Labor Negotiations Update.

Recommendation: Accept Labor Negotiations Update.
TO BE HEARD AT 9:00 A.M.

3.3 Board and Commission Program Workplan.

Recommendation: Approve the Board and Commission Program workplan. (City Clerk)
(Rules Committee referral 11/28/12)
(Deferred from 12/11/12 – Item 3.4 and 1/15/13 – Item 3.3)

3.4 Actions Related to Airport Staffing Needs.

Recommendation:

- (a) Adopt the following Appropriation Ordinance amendments in the Airport Maintenance and Operation Fund:
- (1) Decrease Personal Services appropriation to the Airport Department in the amount of \$77,000; and
 - (2) Establish Personal Services appropriation to the Office of Economic Development in the amount of \$77,000.

(Item continued on the next page)

3. STRATEGIC SUPPORT SERVICES

3.4 Actions Related to Airport Staffing Needs. (Cont'd.)

Recommendation:

(b) Approve the following position changes effective February 3, 2013:

Airport Department		
<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
1130	Office Specialist II	(2.00)
1640	Deputy Director	1.00
3514	Senior Airport Operations Specialist	2.00
3524	Airport Operations Supervisor	2.00
3549	Air Service Development Manager	1.00
8074	Division Manager	(1.00)
<i>Total Airport Department</i>		<i>3.00</i>
Office of Economic Development		
<u>Job Code</u>	<u>Job Classification</u>	
1650	Senior Executive Analyst	1.00
<i>Total Office of Economic Development</i>		<i>1.00</i>
TOTAL		4.00

CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (Airport/City Manager's Office)

3.5 Actions Related to Development Services Staffing and Equipment Needs.

Recommendation:

- (a) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
- (1) Increase the revenue estimate for Licenses and Permits by \$1,091,914;
 - (2) Increase the revenue estimate for Departmental Revenues by \$338,433;
 - (3) Increase the Building Development Fee Program – Personal Services appropriation by \$445,071;
 - (4) Increase the Building Development Fee Program – Non-Personal/Equipment appropriation by \$470,000;
 - (5) Increase the Personal Services appropriation to the Fire Department by \$106,843;
 - (6) Increase the Non-Personal/Equipment appropriation to the Fire Department by \$70,000; and
 - (7) Increase the Public Works Development Fee Program – Personal Services appropriation by \$338,433.

(Item continued on the next page)

3. STRATEGIC SUPPORT SERVICES

3.5 Actions Related to Development Services Staffing and Equipment Needs. (Cont'd.)

Recommendation:

(b) Approve the following position changes effective February 3, 2013:

Planning, Building and Code Enforcement Department

Building Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
3915	Building Inspector/Combo Cert FT	6.00
3919	Building Inspector Supervisor	2.00
3954	Permit Specialist	2.00
<i>Subtotal Building Fee Program</i>		10.00

Fire Department

Fire Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
2323	Senior Hazardous Material Inspector	1.00
<i>Subtotal Fire Fee Program</i>		1.00

Public Works Department

Public Works Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
3712	Engineering Technician	2.00
3713	Associate Engineering Technician	1.00
3714	Senior Engineering Technician	1.00
3814	Associate Engineer	1.00
3815	Senior Engineer	1.00
<i>Subtotal Public Works Fee Program</i>		6.00

TOTAL 17.00

CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (Planning, Building and Code Enforcement/Public Works/Fire/City Manager's Office)

3.6 Annual Summary of Upcoming Labor Negotiations.

Recommendation: Accept staff report and public input on the Annual Summary of Upcoming Labor Negotiations. CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (City Manager's Office)

3.7 Update on Litigation and Administrative Complaint Matters related to Measure B.

Recommendation: Accept City Attorney report on the status of the litigation and administrative complaint matters related to Measure B (The Sustainable Retirement Benefits and Compensation Act). CEQA: Not a Project; File No. PP10-069(a), Staff Reports/Assessments/Annual Reports. (City Attorney's Office)

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Rezoning Real Property Located on the Southwest Corner of West San Carlos Street and Royal Avenue.

Recommendation: Consideration of an ordinance rezoning the real property located on the southwest corner of West San Carlos Street and Royal Avenue (720 West San Carlos Street and 655 Auzerais Avenue) from LI Light Industrial Zoning District to the CIC Combined Industrial Commercial Zoning District on a 5.66 gross acre site (National Retail Properties LP, Owner). CEQA: Re-use of Envision San José 2040 General Plan Final EIR. (Planning, Building and Code Enforcement)
C12-027 – District 6

4.2 Implementation Ordinance for the Habitat Conservation Plan.

Recommendation:

- (a) Adopt a resolution:
- (1) Making certain findings concerning mitigation measures, adopting a mitigation monitoring and reporting program, and making findings concerning alternatives, in accordance with the California Environmental Quality Act of 1970, as amended (“CEQA”), for the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (“Habitat Plan” or “HCP/NCCP”) and related actions for which an Environmental Impact Report (EIR) Impact Report has been prepared in accordance with CEQA (File No. PP12-075);
 - (2) Adopting the HCP/NCCP;
 - (3) Approving the Implementing Agreement among the City of San José, City of Morgan Hill, City of Gilroy, Santa Clara County, Santa Clara Valley Water District and the Valley Transportation Authority (“Local Partners”) and the US Fish and Wildlife Service, California Department of Fish and Wildlife, and National Marine Fisheries Service (“Wildlife Agencies”);
 - (4) Approving the Joint Exercise of Powers Agreement among the City of San José and the cities of Gilroy and Morgan Hill and the County of Santa Clara which establishes the Santa Clara Valley Habitat Agency (“Habitat Agency” or “Implementing Entity”); and
 - (5) Approving the Memorandum of Understanding among all six Local Partners, the Habitat Agency and the Santa Clara County Open Space Authority concerning working relationships for Habitat Plan implementation.

(Item continued on the next page)

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Implementation Ordinance for the Habitat Conservation Plan. (Cont'd.)

Recommendation:

- (b) Approve the Implementing Ordinance adopting and incorporating by reference the Habitat Plan, implementing Habitat Plan requirements upon applications for land use permits in San José within the area covered by the Habitat Plan, and authorizing the collection of mitigation fees on behalf of the Santa Clara Valley Habitat Agency. The Implementation Ordinance adds Chapter 18.40 to Title 18 of the San José Municipal Code, entitled "Habitat Conservation Plan" and authorizes the collection of Habitat Plan mitigation fees on behalf of the Implementing Entity (the Santa Clara Valley Habitat Agency), and also amends Sections 17.04.310 and 17.04.340 of the Municipal Code to require compliance with the Habitat Plan for applications for grading permits.
- (c) Adopt a resolution appointing representatives to the Santa Clara Valley Habitat Agency Governing Board and Implementation Board as follows:
 - (1) Appoint two Council Members, to serve on the Governing Board and two Council Members to serve as their alternates; and
 - (2) Appoint one Council Member to serve on the Implementation Board and one Council Member to serve as his or her alternate; and
 - (3) Appoint one City staff member to serve on the Implementation Board and an additional staff member to serve as his or her alternate.
- (d) Direct staff to advise Council on potential alternative funding strategies or sources to the proposed Nitrogen Deposition fee for the Habitat Plan nitrogen deposition mitigation program that do not add costs for private development projects within the Downtown, Urban Village or Employment Land areas as identified on the General Plan Land Use / Transportation Diagram.
- (e) Direct staff to attempt to develop a City Council "No Surprises" Policy that complies with all legal requirements, including CEQA, in order not to duplicate requirements to address environmental issues that are already specifically addressed in the Habitat Plan, and to work with the other agencies towards that goal.

CEQA: Environmental Impact Report, Resolution No. 76502. (Planning, Building and Code Enforcement)

TO BE HEARD LAST

5. NEIGHBORHOOD SERVICES

5.1 Grant Application for the Coyote Creek Trail.

Recommendation:

- (a) Adopt a resolution to authorize the City Manager or designee to:
 - (1) Submit a grant application to the Metropolitan Transportation Commission (MTC) for an amount up to \$800,000 as part of the One Bay Area Grant (OBAG) grant program with a local match of \$91,760;
 - (2) Make the required assurances to comply with the project application, deadlines to complete the project, grant program requirements, and other assurances required by the MTC as explained in this memorandum; and
 - (3) Accept any grant award and negotiate and execute any documents to effectuate the grant, including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the project, subject to the appropriation of funds.
- (b) Adopt a resolution to authorize the City Manager or designee to:
 - (1) Submit a request that Caltrans reallocate up to \$2,200,000 of existing SAFETEA-Lu funds intended for Coyote Creek Trail development between Montague Expressway and Story Road to trail development more specifically between Selma Olinder Park and Story Road with a local match of \$252,340;
 - (2) Make the required assurances to comply with the project application, deadlines to complete the project, grant program requirements, and other assurances required by the Caltrans as explained in this memorandum; and
 - (3) Accept any grant award and negotiate and execute any documents to effectuate the grant, including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the project, subject to the appropriation of funds.
- (c) Adopt a resolution to authorize the City Manager or designee to:
 - (1) Submit a grant application to the State of California to reprogram up to \$200,000 in grant funds previously allocated to the Milestone Mileage Marker project with no local match requirement;
 - (2) Make the required assurances to comply with the project application, deadlines to complete the project, grant program requirements, and other assurances required by the State of California as explained in this memorandum; and
 - (3) Accept any grant award and negotiate and execute any documents to effectuate the grant, including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the project, subject to the appropriation of funds.

(Item continued on the next page)

5. NEIGHBORHOOD SERVICES

5.1 Grant Application for the Coyote Creek Trail. (Cont'd.)

Recommendation:

- (d) Adopt a resolution to authorize the City Manager or designee to:
- (1) Submit a grant application to the Santa Clara County Open Space Authority for an amount up to \$100,000 with no local match requirement; and
 - (2) Make the required assurances to comply with the project application, deadlines to complete the project, grant program requirements, and other assurances required by the MTC as explained in this memorandum; and
 - (3) Accept any grant award and negotiate and execute any documents to effectuate the grant, including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the project, subject to the appropriation of funds and
 - (4) Negotiate and execute a Conservation Easement upon the project alignment on City property to ensure perpetual operation of City property as a recreational trail open to the public.

CEQA: Mitigated Negative Declaration, File No. PP08-014. Council District 7. (Parks, Recreation and Neighborhood Services)

6. TRANSPORTATION & AVIATION SERVICES

6.1 Actions Related to Taxicab Permits.

Recommendation:

- (a) Approve an ordinance amending Chapter 6.64 of Title 6 of the San José Municipal Code to amend Section 6.64.130 and add a new Section 6.64.465 to create exceptions for out of town taxi businesses and taxi drivers whose principal place of business is outside of the City and who only do business in the City at the airport from obtaining an additional license under Title 6 if properly permitted under Title 25. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport/Police) Ordinance
- (b) Approve an ordinance amending Sections 6.64.440 and 6.64.620 of Chapter 6.44 of Title 6 of the San José Municipal Code regarding Police taxicab permits to remove outdated language and to clarify hearing requirements to ensure consistency with other permit provisions in the Code. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy. (City Attorney's Office) Ordinance
- (Deferred from 12/18/12 – Item 6.2)

DROP

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Report on Bids and Awards of Contract for the Citywide Storm Sewer Inlet and Lateral Replacement Project.

Recommendation: Report on bids and award of contract for the 6743-Citywide Storm Sewer Inlet and Lateral Replacement Project to the low bidder, Ranger Pipelines Inc., in the amount of \$1,007,712 and approval of a contingency amount of \$100,771. CEQA: Exempt, File No. PP12-017, dated February 2, 2012. (Public Works)

8. PUBLIC SAFETY SERVICES

9. REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Transfer of Housing Assets to the Successor to the Redevelopment Agency.

Recommendation: Adopt the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Asset Fund:

- (a) Decrease the Housing Department's Housing Loans and Grants appropriation by \$10,155,043; and
- (b) Establish the Successor Agency to the Redevelopment Agency appropriation in the amount of \$10,155,043.

CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Housing/City Manager's Office)

- **Open Forum**

Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the City Council.

- **Adjournment**

CITY OF SAN JOSE CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBERS AND COMMITTEE ROOMS

The Code of Conduct is intended to promote open meetings that welcome debate of public policy issues being discussed by the City Council, their Committees, and City Boards and Commissions in an atmosphere of fairness, courtesy, and respect for differing points of view.

1. Public Meeting Decorum:

- a) Persons in the audience will refrain from behavior which will disrupt the public meeting. This will include making loud noises, clapping, shouting, booing, hissing or engaging in any other activity in a manner that disturbs, disrupts or impedes the orderly conduct of the meeting.
- b) Persons in the audience will refrain from creating, provoking or participating in any type of disturbance involving unwelcome physical contact.
- c) Persons in the audience will refrain from using cellular phones and/or pagers while the meeting is in session.
- d) Appropriate attire, including shoes and shirts are required in the Council Chambers and Committee Rooms at all times.
- e) Persons in the audience will not place their feet on the seats in front of them.
- f) No food, drink (other than bottled water with a cap), or chewing gum will be allowed in the Council Chambers and Committee Rooms, except as otherwise pre-approved by City staff.
- g) All persons entering the Council Chambers and Committee Rooms, including their bags, purses, briefcases and similar belongings, may be subject to search for weapons and other dangerous materials.

2. Signs, Objects or Symbolic Material:

- a) Objects and symbolic materials, such as signs or banners, will be allowed in the Council Chambers and Committee Rooms, with the following restrictions:
 - No objects will be larger than 2 feet by 3 feet.
 - No sticks, posts, poles or other such items will be attached to the signs or other symbolic materials.
 - The items cannot create a building maintenance problem or a fire or safety hazard.
- b) Persons with objects and symbolic materials such as signs must remain seated when displaying them and must not raise the items above shoulder level, obstruct the view or passage of other attendees, or otherwise disturb the business of the meeting.
- c) Objects that are deemed a threat to persons at the meeting or the facility infrastructure are not allowed. City staff is authorized to remove items and/or individuals from the Council Chambers and Committee Rooms if a threat exists or is perceived to exist. Prohibited items include, but are not limited to: firearms (including replicas and antiques), toy guns, explosive material, and ammunition; knives and other edged weapons; illegal drugs and drug paraphernalia; laser pointers, scissors, razors, scalpels, box cutting knives, and other cutting tools; letter openers, corkscrews, can openers with points, knitting needles, and hooks; hairspray, pepper spray, and aerosol containers; tools; glass containers; and large backpacks and suitcases that contain items unrelated to the meeting.

**CITY OF SAN JOSE CODE OF CONDUCT FOR PUBLIC MEETINGS IN
THE COUNCIL CHAMBERS AND COMMITTEE ROOMS (CONT'D.)**

3. Addressing the Council, Committee, Board or Commission:

- a) Persons wishing to speak on an agenda item or during open forum are requested to complete a speaker card and submit the card to the City Clerk or other administrative staff at the meeting.
- b) Meeting attendees are usually given two (2) minutes to speak on any discussion item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak.
- c) Speakers should discuss topics related to City business on the agenda.
- d) Speakers' comments should be addressed to the full body. Requests to engage the Mayor, Council Members, Board Members, Commissioners or Staff in conversation will not be honored. Abusive language is inappropriate.
- e) Speakers will not bring to the podium any items other than a prepared written statement, writing materials, or objects that have been inspected by security staff.
- f) If an individual wishes to submit written information, he or she may give it to the City Clerk or other administrative staff at the meeting.
- g) Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

Failure to comply with this Code of Conduct which will disturb, disrupt or impede the orderly conduct of the meeting may result in removal from the meeting and/or possible arrest.

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

TONI J. TABER

Acting City Clerk

Acting City Clerk of the City of San Jose
County of Santa Clara, State of California

By , Deputy